IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 42 OF 2004

Shri Satyawan Pagi,
major of age,
resident of House No. 443, Modewada,
Palolem, Canacona, Goa.
(Original Accused no.1)(presently
lodged at the Central Jail, Aguada) ..... Appellant

V e r s u s

1. Union of India,
   through Shri M. P. Vaz,
   Superintendent of Central Excise,
   Anti-Smuggling Unit,
   Margao, Goa. (Original Complainant)

2. Shri Vimal Singh,
   major of age,
   resident of House no. 304,
   Reprawado, Varca, Salcete, Goa,
   (And originally hailing from Ward 7,
   Randiri, Ballusrai, Bihar State)
   (Original Accused no.2) ..... Respondents

Shri S. D. Lotlikar, Senior Advocate with Ms. Shreya S. Naik, Advocate for the Appellant/Accused no.1.

Shri J. Vaz, Spl. P.P. for Respondent no.1.

Shri J. P. D'Souza, Advocate for Respondent no.2.

A N D

CRIMINAL APPEAL NO. 49 OF 2004

Vimal Singh,
Presently lodged in Central Jail, Aguada,
Sinquerim, Bardez, Goa. ..... Appellant

V e r s u s

Union of India,
through Shri M. P. Vaz,
Superintendent of Central Excise,
Anti-Smuggling Unit,
Margao, Goa. (Original Complainant) ..... Respondent

Shri J. P. D'Souza, Advocate for Appellant/Accused no.2.

Shri J. Vaz, Spl. P. P. for Respondent.

CORAM : **N. A. BRITTO, J.**

DATE : ***2nd March, 2006.***

JUDGMENT

These appeals are filed by the accused who have been convicted and sentenced under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, ('Act' for short), by Judgment/Order dated 07.07.2004 of the Special Judge, Mapusa, Goa. The

said accused were prosecuted after a complaint was filed by Shri Vaz, Superintendent of Customs and Central Excise/P.w.4, with the allegation that on 23.02.2001, at about 18.30 hours, both of them while travelling on a motorcycle from Margao towards Panjim, were found in possession of 8.5 kgs hashish valued at about Rs.20,00,000. In the course of the trial, the Complainant examined himself/P.w.4 and five more witnesses.

2. The case of the accused was that they were falsely implicated. As per A1/Satyawan Pagi, in his statement separately filed after recording his statement under Section 313 of the Code of Criminal Procedure, A1/Satyawan Pagi, was in the precincts of the Margao bus stand, when some persons grabbed him, put him in a jeep and took him to a building in Margao, where he was questioned for hours and was threatened and assaulted and forced to put his signature on various documents. A1/Satyawan Pagi, denied having confessed to the possession of the charas and about knowing A2/Vimal Singh previously. As per A2/Vimal Singh, who chose to give his evidence as D.w.1, he stated that he was proceeding from Vasco da Gama to Margao, at about 10.00 hours and that there was mechanical failure to the bus he was travelling and since it was not known how much time would be taken for the repair of the said bus, he asked the

driver about the distance and was told that it was about three kilometres, which he thought, he would cover on foot and as he was walking towards Margao bus stand, with a view to keep his appointment at about 11.30 hours, he found that a private vehicle had stopped by his side, who caught hold of him on either side and forced him in the vehicle and then he was taken and confined to a room and was questioned about the persons to whom he had sold drugs and he told them that he did not know to which persons they were referring to nor did he know the persons who were referred to by them and, on the next morning, at about 10.00 hours, he was made to sign some blank papers upon a representation that the signatures were being taken to the effect that he would not come back to Goa. A2/Vimal Singh, stated that he had not given any statement to the said persons in connection with this case. When he was examined, he stated that he was not produced before any Magistrate until 27.02.2001.

3. Considering the evidence produced on behalf of the Complainant and that of A2/Vimal Singh, the learned Special Judge came to the conclusion that the evidence of the Complainant was duly corroborated by the panch witness and P.w.5/Inspector Cruz and the same established the Complainant's case as regards the recovery of the stated

quantity of hashish from the two accused. The learned Special Judge also came to the conclusion that the statements recorded under Section 67 of the Act, were voluntary and which come in aid to further establish the case against the accused and, by the examination of P.w.2/Fatima Noronha, Warehouse Officer, the Complainant had established safe deposit of the sealed packages on 24.02.2001, thereby ruling out any possibility of tampering and that by examination of P.w.6/Lillian Fernandes, it was established that the sealed packages were indeed deposited on 24.02.2001, being a Saturday, in view of the Circular issued by the Ministry of Finance, to keep the offices open till 31.03.2001, and last but not the least, by the examination of P.w.1/Mahesh Kaissare, the Scientific Officer, the Complainant had established that the representative sample as well as the remnant quantity was tested positive for hashish.

4. It would be advantageous to refer to the evidence of the Complainant Shri Vaz/P.w.4, without minor details, in order to appreciate the other evidence produced on behalf of the Complainant and the issues of law raised.

5. The Complainant Shri Vaz/P.w.4, in his evidence stated that on

23.02.2001, at about 3.30 p.m., Inspector Shri Cruz/P.w.5, had received information at Margao that two persons of stated description, one by name Satyawan Pagi/A1 and the other Vimal Singh/A2, also of stated description, would be carrying substantial quantity of hashish and would be travelling on a maroon colour Yamaha motorcycle having no. GA-02/K-8510, and would arrive at Margao at about 18.00 hours, proceeding towards Panaji and the said information was reduced into writing in form DRI (exhibit 59) and submitted to him and copies of the same were sent to the Deputy Director, DRI, Mumbai, etc. and it was also conveyed to his next superior officer namely Shri Monteiro, Assistant Commissioner of Central Excise, Panaji, telephonically, who issued necessary instructions and directions and, thereafter, the team of officials set out for the raid and proceeded to KTC bus stand at about 17.30 hours and kept surveillance for the arrival of the said two persons. The two panchas were informed about the said reliable information and were introduced to the other raiding party members at the KTC bus stand and, at about 18.30 hours, they saw a motorcycle with two persons matching the description and he signalled the rider to stop the motorcycle and the motorcyclist/A1 started to speed the motorcycle but they managed to stop it and after stopping, he identified himself to the said two persons and the rider identified himself as Satyawan Pagi/A1, resident

of Palolem, Canacona, and the pillion rider as Vimal Singh/A2, resident of Varca, originally from Bihar and they also noticed that A1/Satyawan Pagi, was carrying a maroon colour air bag strapped to his shoulder and, thereafter, he informed both of them in the presence of panchas about the said reliable information and that they wanted to take their search as well as that of the shoulder bag and the motorcycle for hashish and they offered themselves to the accused to be searched, which the accused declined and since he found that the place was not safe for conducting the panchanama and the search, both the accused were asked to sit in the Departmental jeep and along with the Officers, were taken to their office at Margao, with the said two panchas and, while on the way, the maroon colour air bag remained strapped around the shoulder of A1/Satyawan Pagi, while the motorcycle was taken by two Officers. The Complainant has stated that on being asked at KTC bus stand, about the contents of the bag, both the accused disclosed that it was containing hashish. On reaching Margao, P.w.5/Shri Cruz, informed each of the accused that they had an option of being searched before a Magistrate or an independent Gazetted Officer, which they did not accept and, thereafter, P.w.5/Shri Cruz, searched A1/Satyawan Pagi and on his personal search, cash of Rs.200/-, a notarized copy of driving license was found and while the cash with wallet was

returned to A1/Satyawan Pagi, the notarized photo copy of the driving license was taken for further investigation and, on search of A2/Vimal Singh having been taken, an amount of Rs.500/- was found which was returned and when the bag having inscription 'Tomy Hillfiger', being carried by A1/Satyawan Pagi was opened, it was found to contain 17 blackish substances in the form of cakes wrapped in transparent polythene material, were weighed and found to be 8.5 kgs and when tested with Field Testing Kit, were found positive for hashish and, then he took representative samples of 50 grams each and heat sealed in a polythene bag and then in brown colour envelopes and, thereafter, the envelopes were sealed with a brass seal and each of the said two samples were marked as S-1 and S-2. The polythene bag containing the remaining quantity of 8.4 kgs, was heat sealed, put in a corrugated box, wrapped in two papers, tied with jute thread and sealed the same with brass seal, etc. The Complainant stated that the panchanama of seizure ended at about 8.40 p.m. and it was signed by him, both the accused, both the panchas and the Seizing Officer Shri Pandey and, copies of the same were given, to both the accused under their signature and, thereafter, he issued summons to A1/Satyawan Pagi, which was duly received by him and pursuant to the said summons, he recorded his statement which was produced at exhibit 62 and in his said statement,

A1/Satyawan Pagi, admitted the possession and transportation of the said contraband hashish by his motorcycle No. GA-02/K-8510 and further disclosed that he had received the said contraband from A2/Vimal Singh and that both wanted to sell the same to a prospective foreigner at Verna at about 19.00 hours on 23.02.2001 and that he was a regular dealer in the sale of Narcotics and further disclosed that the said contraband was given to him by A2/Vimal Singh in the maroon colour air bag at his residence in Palolem; that summons were also issued to A2/Vimal Singh, which were acknowledged by him and his statement was recorded and produced at exhibit 64. The Complainant stated that A2/Vimal Singh, disclosed that the said contraband drugs were given by him to A1/Satyawan Pagi, on the morning of 23.02.2001 and that he had come with the same to the house of A1/Satyawan Pagi on a hired motorcycle and that he had accompanied A1/Satyawan Pagi on his said motorcycle to transport the said contraband in the said maroon colour air bag to a foreigner at Verna at 19.00 hours. Thereafter, arrest notices were issued individually to both of them and A1/Satyawan Pagi was arrested at 00.15 hours and A2/Vimal Singh at 00.20 hours on 24.02.2001 and were produced for remand before JMFC, Margao, at about 10.00 hours and, thereafter, were lodged in the Judicial Lock Up at Margao, at about 10.30 hours to be produced on 27.02.2001

before the Special Judge, at Mapusa, and on the same day, he sent a report under Section 57 of the Act to the Assistant Commissioner Shri Monteiro, a copy of which, was produced at exhibit 66. The Complainant stated that since 24.02.2001 was not a working day, he sought permission of the Assistant Commissioner to order the Warehouse to be opened, and a copy of the letter was produced at exhibit 57. The Complainant stated that the seized articles namely the two samples S-1 and S-2 of 50 grams each and the remnant quantity of 8.4 kgs in a corrugated box, were taken to the Warehouse and were deposited by virtue of letter which was produced at exhibit 34 and the Warehouse Officer had issued a receipt which was produced at exhibit 35. The Complainant stated that on 26.02.2001, he made a letter to the said Warehouse Officer to hand over the sample S-1 to Inspector Shri Parrikar, to take the same for analysis to the laboratory of the Directorate of Food and Drugs Administration and, on the same day, sample S-1 was collected and handed over to the Directorate of Food and Drugs Administration. He stated that the motorcycle GA-01/K-8510, was deposited in the Warehouse by letter dated 02.04.2001. The Complainant stated that he had called the panchas from his office telephonically and, accordingly P.w.3/Arnold, had come to his office and then he told him to follow the Departmental jeep to the KTC bus stand, at Margao, and while

P.w.3/Arnold followed them, the other pancha went along with them in the jeep. The Complainant admitted that there was an error in the complaint in stating that P.w.3/Arnold Costa, had proceeded in the Departmental vehicle but the fact was that he had followed them separately on his motorcycle. In cross examination, the Complainant had stated that he had explained the purpose of the raid and the contents of information to P.w.3/Arnold Costa in the Customs Office at Margao, before he followed them to the KTC bus stand. He also stated that the Field Testing Kit is kept in his custody in a cupboard of which the keys are with him and the seal is also kept in the same cupboard. He stated that the attached property was kept in the different cupboard of which both the keys were with him from the conclusion of the raid on the night of 23.02.2001, till the sealed articles were taken to the laboratory in the afternoon of 24.02.2001. Later, he stated that he had removed the seal from the cupboard and had carried it to the Warehouse. He stated that the godown was closed on 24.02.2001, being a holiday. He stated that the statements came to be recorded by putting questions to the accused individually and recording their answers and that the questions to A1/Satyawan Pagi were put in Konkanni as well as in English and to A2/Vimal Singh, in Hindi and A1/Satyawan Pagi answered the questions in English and Konkanni, while A2/Vimal Singh,

answered the same in Hindi. He denied that the contents of the said statements were false.

6. P.w.2/Fatima Noronha, the Warehouse Officer, has substantially corroborated the Complainant/P.w.4 except to say that 24.02.2001 was a working day, which according to the Complainant/P.w.4, was not a working day. On behalf of the Complainant, to clear the said controversy, P.w.6/Lillian Fernandes, the Administrative Officer, was examined. According to P.w.2/Fatima Noronha, the Complainant/P.w.4, had come with four sealed packages on 24.02.2001 along with a letter and she had issued a receipt to him. The letter was produced at exhibit 34 and the receipt at exhibit 35. She confirmed the motorcycle having been brought on 24.02.2001. She produced the Warehouse register, copies of which, were taken and marked exhibit 39. She stated that on 26.02.2001, the Complainant/P.w.4, had sent a letter through Inspector Parrikar, calling for sealed packet of the sample S-1 to be sent to the Directorate of Food and Drugs Administration for analysis and she produced the said letter at exhibit 36. P.w.1/Mahesh Kaissare , the Junior Scientific Officer, confirmed that he had received on 26.02.2001, a sealed brown paper envelope and that the seals fixed on the envelope were intact and tallied with the specimen seal

impression separately sent and after he carried out the analysis of the said sample S-1 containing 50 grams of dark brown coloured substance, he found the same to be containing hashish and he prepared the report and sent to the Complainant. He also stated that on 07.03.2002, he had received the remnant sample from the Special Judge, Mapusa, along with the sample S-2 and the former he opened on 01.04.2002 and, after analysis, found that the same contained hashish. He stated that he did not analyze the sample S-2. P.w.3/Arnold D' Costa, substantially corroborated the version of the Complainant/P.w.4, except to say that he had come directly from his office at the Primary Health Centre, Curtorim, to the KTC bus stand, on his own two wheeler No. GA-02/M-3763 near the KTC bus stand, where the raiding party was present contrary to what the Complainant/P.w.4 stated, namely that P.w.3/Arnold being informed telephonically, had come to his office and then followed them, they having gone with the other pancha in the departmental jeep to the KTC bus stand, Margao. These are the main and basic features of the evidence produced on behalf of the Complainant.

7. First, I will deal with the submissions made by the learned Counsels on behalf of the accused in relation to the statements of the

accused recorded by the Complainant under Section 67 of the Act, which were produced at exhibit 62 and 64 respectively. There can be no dispute that the said statements were recorded by and before the Complainant/P.w.4, who was Gazetted Officer. Though what is stated in the said statements or for that matter by the Complainant/P.w.4, is that the said statements were recorded by Inspector Shri Pandey, actually what the Inspector Shri Pandey did, was to write down the said statements. The said statements were recorded after both the accused were issued with summons at about 21.00 hours on 23.02.2001. Shri Lotlikar, the learned Counsel on behalf of A1/Satyawan Pagi, has submitted that the statement of A1-exhibit 62, could not be relied upon because the contents of the said statement were not put to A1/Satyawan Pagi and once the said statement is left out, there would be no legal evidence to convict the said accused.

On the other hand, Shri J. P. D'Souza, the learned Counsel on behalf of A2/Vimal Singh, has submitted that there is no legal evidence against A2/Vimal Singh, in as much as the prior information, exhibit 59, being hearsay, it could only justify the launching of the raid and to that extent, it may be admissible and relevant. Apart from the said statements recorded of both the accused, which have been produced at exhibit 62 and

64 respectively, the Complainant in his evidence had stated that after stopping the accused at the KTC bus stand, they were told about the reliable information and asked about the contents of the bag to which, both the accused disclosed that it was containing hashish. It appears that the said statement of the Complainant was objected to, from being recorded, but it must be stated to the credit of the learned Special Judge, that the learned Special Judge did record the said statement though she was of the opinion that it ought not be recorded. She did not assign any reasons for upholding the objection. The said statement of the Complainant is amply corroborated by P.w.3/Arnold D' Costa, as well as P.w.5/Inspector Shri Cruz, and if the evidence of the said three witnesses is accepted, and there is no reason as to why the same should not be accepted, the same was sufficient to convict the accused. The said admission by both the accused that the bag contained hashish, is nothing but a confession that they were in possession of the said hashish, A1/Satyawan Pagi being in physical possession of the same and A2/Vimal Singh being in its constructive possession. It is well settled that an admission before Customs/Central Excise authorities, is not hit by Sections 25 and 26 of the Evidence Act (See ***Union of India v. Munna (2004 (7) SCC 178)***. It may be stated that possession is a polymorphous term which has different meanings in different contexts. Generally, it has

two aspects, one being less important namely '*corpus*' and the other more important namely '*animus*'. Once it is proved that there was '*animus*', it does not matter whether the possession is mediate or immediate, direct or indirect or exclusive or joint, and from the said admission it could be gathered that both the accused were in joint possession of the said hashish.

8. As regards the submission of Shri Lotlikar, the learned Counsel on behalf of A1/Satyawan Pagi, it must be stated that A1/Satyawan Pagi, was specifically told by the learned Special Judge vide question no. 92 of his statement recorded under Section 313 of the Code of the Criminal Procedure 1973, that summons were issued to him vide exhibit 61 and his statement exhibit 62, was recorded and the accused replied that it was false. A1/Satyawan Pagi was further told that it was in the evidence of the Complainant that A1/Satyawan Pagi had admitted the possession and transportation of the said hashish by the said motorcycle no. GA-02/K-8510, disclosing that he received the same from A2/Vimal Singh and both wanted to sell the same to a prospective foreigner at Verna at about 19.00 hours on 23.02.2001 and A1/Satyawan Pagi also answered this question by stating that it was false. Question 59 was as regards the information received by P.w.5/Shri Cruz, that two persons by name Satyawan Pagi and Vimal Singh

would be carrying substantial quantity of hashish, etc. For this also, the accused answered that it was false. It is contended on behalf of A1/Satyawan Pagi that question no. 93 in the statement under Section 313 of the Code, refers to what the Complainant has stated and not what the statement disclosed but, I must hasten to say that, what the Complainant has stated is also what A1/Satyawan Pagi had stated in his said statement-exhibit 62, and therefore, in my view, A1/Satyawan Pagi had sufficient opportunity to explain the said incriminating circumstance against him, which he chose not to explain except to say that it was false. It is pertinent to note here that the accused did not even say that his said statement exhibit 62 was recorded after being assaulted and threatened. There is no doubt that the provision of Section 313 of the Code is one of basic fairness of a criminal trial and in case any evidentiary material is not put to the accused, the Court is required ordinarily to leave out such material from consideration. As far as the accused is concerned, it gives him an opportunity to explain the said inculpatory material and in case of refusal to given an answer or plausible explanation, the Court is at liberty to assume that the accused has no answer or plausible answer to the inculpatory material to which his attention is drawn by the Court. The Apex Court in the case of ***State of Punjab v. Swaran Singh ((2005) 6 S.C.C. 101)***, has

stated that the questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial, the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution but, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the Court in evaluation the evidence properly, the Court should bring to the notice of the accused to enable him to give an explanation or answers for such adverse circumstances in the evidence. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. In the case at hand, question no. 92 makes it abundantly clear that the statement of A1/Satyawan Pagi was recorded and was produced at exhibit 62 and the gist of the said statement was put to the accused in the form of question no. 93. Whether it was put as perceived by the Complainant or independently

of it, would not make any difference because the accused had no other answer to give than to deny the recording of the very statement-exhibit 62 as false. There is, therefore, no question of keeping the said statement-exhibit 62 aside from consideration as part of evidence produced on behalf of the Complainant.

9. The next contention of Shri D' Souza, the learned Advocate of A2/Vimal Singh, is that the said statement exhibit-64, at the most could be considered only as an admission and not a confession. In this regard, it is necessary to refer briefly not only to the statement of A2/Vimal Singh at exhibit-64, but also to the statement of A1/Satyawan Pagi at exhibit 62.

10. A1/Satyawan Pagi stated thus :-

> "...I realized that I could earn a lot by dealing in narcotics as I had seen lot of local boys making fast money by supplying narcotics to foreigners. Initially I started supplying one or two tolas of hashish which was brought by me from Kashmiri and Nepali boys from Palolem...as the tourist season was going to start shortly, I ordered 10 kilos from Budo Paswan in the month of October,

who introduced me to Vimal Singh and told me that Shri Vimal Singh would be the person who will deliver the hashish to me. Three days after giving the order, Shri Vimal Singh gave me the delivery of hashish at Palolem. I collected the hashish and gave him the amount of Rs.2,00,000/-... I contacted Shri Vimal Singh yesterday afternoon i.e. On 22.02.2001 and the Vimal Singh told me that he could give me only 8.5 kilos as both he and Budo Paswan had already sold 1.5 kilos to one person from Margao...Shri Akhir and the foreigner again met me yesterday evening and I told them that I could supply only 8.5 kilos, both of them agreed that they would collect the stuff on the following day and gave me a token of Rs.5,000/- and Shri Vimal Singh came to Palolem on a motorcycle along with maroon coloured bag, which contained hashish of 8.5 kilos...I took the maroon coloured bag and kept it at the backyard of my house. Then at around 12.45 hours on 23.02.2001, Shri Akhir came and told me that the foreigner was frightened to collect the stuff at Palolem and that he would collect the delivery at Verna Industrial Estate and that both the said Akhir and foreigner would be present at around 17.00 hours opposite Verna Industrial

> Estate, adjacent to the road leading to Sancoale...we left Palolem at around 17.00 hours and proceeded to Verna by my Yamaha motorcycle no. GA-02/K-8510. On the road opposite to Kadamba bus stand, we were stopped by the Officers of Customs and Excise. I tried to resist and Shri Vimal Singh tried to run away but we were overpowered and apprehended and brought to the Customs Office."

11. A2/Vimal Singh, in his statement at exhibit 64, inter alia, stated thus:-

> "...I told Shri Satyawan that I could give delivery of only 8.5 kilos of hashish ... on 23.02.2001, I came to Margao by bus and took a hired motorcycle to go to Palolem along with 8.5 kilos hashish, which was in maroon coloured bag. I reached Palolem at around 10.15 hours and give the maroon coloured bag containing 8.5 kilos of hashish to Satyawan and Shri Satyawan kept it at his residence...at around 12.30 hours, one person who Shri Satyawan Pagi introduced to me as Akhir came and told us that the foreigner who wanted the hashish was frightened to take the delivery at Palolem and that the foreigner would

> collect the delivery at around 19.00 hours opposite Verna Industrial Estate. We left Palolem at around 17.00 hours and proceeded towards Verna by Yamaha motorcycle GA-02/K-8510. We were stopped by the customs officials opposite Kadamba bus stop, Margao stand. I tried to run but I was apprehended and brought to the custom office, Margao, along with the maroon coloured bag containing 8.5 kilos of hashish and which was strapped around the neck of Satyawan Pagi."

12. When the statement of A1/Satyawan Pagi at exhibit 62 and the statement of A2/Vimal Singh at exhibit 64 are read as a whole, whether independently or together, they clearly go to show that at the relevant time, when both were intercepted by the Complainant, they were in conscious possession of the seized hashish of 8.5 kilos and were transporting the same to be handed over to a foreigner at 19.00 hours at Verna Industrial Estate. An admission has been defined by Section 17 of the Evidence Act. The word "confession" has not been defined under the Indian Evidence Act, 1872. An "admission" has been defined as a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any other

persons, and under the circumstances, hereinafter mentioned. Although, a confession will include an admission and in turn an admission a statement, the reverse is not necessarily true. If a person admits facts necessary to convict him, it is a confession and if such admission does not give all essential elements of crime, it is only an admission and not a confession. Confession in other words, is a direct admission or acknowledgment of the guilt by a person who had committed a crime. As per Stephen in his Digest of the Law of Evidence, a "confession" is defined as an admission made at any time by a person charged with crime stating or suggesting the inference that he has committed the crime. In order to distinguish a confession from an admission, a simple test is applied and if a statement by itself is sufficient to prove the guilt of the maker, it is a confession but if the statement falls short of it, it amounts to an admission. A confession must either admit in terms of the offence or at any rate substantially all the fats which constitute the offence, as stated by Lord Atkin in Privy Council decision in the case of ***P. Narayan v. Emperor (AIR 1999 P.C. 47)***.

The said statement exhibit 62 and 64, whether read independently or conjointly, show that each of the accused had a role in the transportation and possession with conscious knowledge of what they were

doing and once they were accosted by the Complainant, in a manner stated by him, they could be said to have been in conscious possession of the said hashish, which was in physical possession of A1/Satyawan Pagi and constructive possession of A2/Vimal Singh.

13. The evidence led on behalf of the Complainant shows that A2/Satyawan Pagi, was speaking only in Hindi and that is also evident from his statement recorded under Section 313 of the Code. Shri D' Souza, on behalf of A2/Vimal Singh submits that since exhibit 64 is not recorded in Hindi language and the person who recorded the same namely, Inspector U. B. Pandey, was not examined, the said statement cannot be accepted. In my view, this submission cannot be accepted. As already stated, the statement of A2/Vimal Singh-exhibit 64, is stated to have been recorded by the said Pandey but, what is meant to be conveyed by that is that it was written down by him. The summons issued to A2/Vimal Singh were issued by the Complainant and it is stated in the said statement that A2/Vimal Singh was before the Complainant for the purpose of recording the said statement. The statement-exhibit 64 shows that it was recorded before the Complainant and it is also recorded in the said statement that the statement was read over and explained to A2/Vimal Singh in Hindi and was correctly

recorded as per his say. It is therefore, safe to infer that the said statement was recorded by the Complainant himself but, in fact written down by the said Shri Pandey and it is the Complainant who had explained the said statement of A2/Vimal Singh in Hindi and found by the latter to have been correctly recorded. The next submission of Shri D' Souza is that the said statement-exhibit 64, is not in question and answer form and, therefore, it is of little or no value. In this regard, the Complainant was cross examined, on behalf of the accused, and he stated that the statements were recorded after putting questions to the accused individually and recording their answers, but conceded after going through the said statements, that no questions were found recorded in the said statements. It is true that normally when a statement is recorded in question and answer form, it is given greater weight than the one recorded in the form of narration but, even if a few questions are recorded, then eventually the narration has to come from the person from whom the statement is being recorded. In my view, only because the said statements were not reduced in writing in the form of question and answer, would not be sufficient to discard the said statements. The next submission of Shri D' Souza, is that the said statements were retracted subsequently by the accused and as far as A1/Satyawan Pagi is concerned, on 04.06.2001, and as far as A2/Vimal

Singh is concerned, on 06.11.2001, and therefore, could not be relied upon. Admittedly, both the accused were produced before the learned J.M.F.C., on 24.02.2001 and it is not their case that they had complained to the learned J.M.F.C. about their statements being recorded under threat or coercion. The accused were produced before the learned Special Judge on 27.02.2001 and, at that stage also, both the accused did not complain that their said statements were recorded under duress. Both the accused were produced again after chargesheet was filed 21.05.2001 and, at that stage also, no grievance was made by the accused as regards their statements. The Supreme Court in the case of ***Bharat v. State of U.P. ((1971) 3 S.C.C. 950),*** took note of what the Privy Council once stated, that in India, it is the rule to find a confession and to find it retracted later and the Court may take into account the retracted confession, but it must look for the reasons for making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the Court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the Court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. The Court observed that a retracted confession requires general assurance that

the retraction was an afterthought and that the earlier statement was true. In this case, the statements exhibit 62 and 64, were recorded by the Complainant and they appear to have been retracted not at the earliest opportunity but much later on the basis of legal advice. It is relevant to note that when the accused were questioned about the said statements, the accused did not give any explanation to say that they were recorded after threats, assaults, etc. Therefore, it could be safely said that the retraction in this case was by way of an afterthought and upon legal advice and, therefore, the retraction can be clearly overlooked by the Court. As stated by the Apex Court in ***NCB v. Murlidhar Soni (2004(4) Supreme Court 12)***, it is only when such statements are proved to have been obtained under duress is that they are inadmissible. The statement of A2/Vimal Singh that he was not taken before a Magistrate, cannot be accepted. The evidence of the Complainant shows that he was taken; the evidence of A2/Vimal Singh also shows that he was taken to a doctor as well and in case the allegations of abuse and assault now made by A2/Vimal Singh were true, than A2/Vimal Singh would have certainly complained about the same either to the doctor, the J.M.F.C. or at least on 27.02.2001, when he was produced before the Learned Special Judge.

14. No doubt, the statements recorded by the Complainant namely exhibit 62 and 64, under Section 67 of the Act, are in the nature of extra-judicial confessions. The Apex Court as regards extra judicial confessions, has stated in the case of ***Kishore Chand v. State of H.P. (1990 Cri. L. J. 2289)***, that the value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. An unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. That was the case where an accused was stated to have made a confession to a Pradhan accompanying the Police Officer, after the latter had left the spot and the Supreme Court held that such an extra-judicial confession was hit by Sections 25 and 26 of the Act. The Apex Court in the case of ***Siva kumar v. State (2005 A.I.R. SCW 6360)***, has stated that an extra-judicial confession made by an accused before the Village Administrative Officer could be relied upon as it was not inadmissible. The Apex Court referred to its earlier decision in the case of ***Rajasthan v. Raja Ram ((2003) 8 SCC 180)*** and reiterated that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The

confession could be proved like any other facts. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. In the case at hand, the evidence of the Complainant has been convincing, consistent and plausible and in the light of that, there is no room to doubt the said extra-judicial confession and, as far as that of A2/Vimal Singh-exhibit 64 is concerned, there is no question of discarding the same because it was not recorded in Hindi, a language spoken by him or in question and answer form. In my view, there is no room for suspicion on those counts since the said extra-judicial confessions have been recorded in a detailed narrative form, which certainly could not have come from the imagination of the Complainant unless all the details were given by the accused. In an identical situation, the Supreme Court in the case of ***M. Prabulal v. Assistant Director DRI ((2003) 8 SCC), 449)*** observed thus:-

> " There was, under the circumstances, no delay in recording the statements of the appellants. Further, it is to be borne in mind that the appellants did not make any complaint before the Magistrate before whom they were produced

> complaining of any torture or harassment. It is only when their statements were recorded by the trial Judge under Section 313 of the Code that a vague stand about the torture was taken. Under these circumstances, the confessional statements cannot be held to be involuntary. The statements were voluntarily made and can, thus, be made the basis of conviction."

15. Shri D' Souza, has next submitted that the accused were greatly prejudiced in the trial. In other words, the grievance is that the accused did not have a fair trial and that is because no statement of Inspector Cruz/P.w.5, was not recorded and, therefore, he was free to make improvements in the case as desired. Shri D' Souza, has submitted that the Complainant could have recorded the statement of P.w.5/Shri Cruz, either under Section 161 of the Code or Section 67 of the Act and could have done so even after filing of the charge sheet. It appears that on or about 11.07.2001, Advocate Shri Peter D' Souza, then appearing for A-1, had filed an application before the trial Court and although a reply was filed to the same, the same was not pressed for and, as such, no formal orders were passed on the same by the trial Court. It was contended on behalf of the accused that before charge was framed, it was necessary that the accused

should have been supplied with copies of statements of those examined along with the copies of any documents of which the prosecution proposes to rely on and failure to supply these documents and statements would clearly prejudice the accused and the trial could be ultra vires Article 21 of the Constitution. In the reply filed, it was stated that the Complainant had furnished all the copies of the documents relied upon by the Complainant and that the accused no.1 would have ample opportunity to cross examine all the witnesses and that the above trial could not be ultra vires Article 21 of the Constitution of India. It has been submitted by Shri Vaz, the learned Public Prosecutor, that this ground was not taken up in appeal. Shri Vaz has further submitted that Shri Cruz was listed as a witness in the complaint and he was examined only to prove the prior information-exhibit 59 and the accused could not have been taken by surprise because his name was listed. In my view, whether it is Section 161 of the Code or for that matter, Section 67 of the Act, both give a discretion to the officer recording the statement whether to record or not and it is not mandatory that he has to record the statements of all witnesses examined by him. It is common knowledge that in most complaint cases, no statements of witnesses are recorded and because no statements are recorded, the trial cannot be said to be unfair. Saying so, would amount to saying that in all complaint cases, where

generally no statements of witnesses are recorded, the Code has prescribed a procedure for the trial of complaint cases, which is unfair. There is no doubt that, a trial has to be just and fair not only to the accused but also to the prosecution. In the case at hand, the name of P.w.5/Shri Cruz was cited in Para 35 of the complaint along with the names of other witnesses and the documents were also enlisted in Para 36 of the complaint. Even in cases where statements are recorded, it is not that every detail of an incident is recorded. There is no guarantee that even if the statement of P.w.5/Inspector Cruz was recorded by the Complainant, the omissions which are noticed and pointed out from Exhibit 59 would have been recorded in such a statement. A witness is not expected to give all minor details in respect of the incident. It is the duty of the Court to find out whether the omissions are material and what weight is to be given to the same, viz a viz, the other evidence given on oath by the witness. In the case at hand, the allegation that there was a major improvement made by P.w.5/Shri Cruz, as regards the direction namely that they would be travelling from Margao towards Panaji on that day, is certainly not an improvement which would affect the evidence of the Complainant or P.w.5/ Shri Cruz. The Supreme Court in the case of ***Zahira Habibulla H. Sheikh & anr. v. State of Gujarat & Ors. (AIR 2004 S.C. 3114)***, has stated that:

"It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at that trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will be not correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated."

In my view, the name of Inspector Shri Cruz/P.w.5, was very much cited in the complaint and he was elaborately cross examined by the accused and, therefore, there is no question of the accused having been prejudiced only because his statement was not recorded by the Complainant.

16. The next controversy is regarding the recall of P.w.2/Fatima Noronha, pursuant to the application dated 13.04.2004, filed on behalf of the Complainant under Section 311 of the Code for the purpose of re-examination and for the production of Circular No. 142/2001 dated 08.02.2001. The filing of the said application was occasioned because it was noticed at the stage of arguments that the Complainant had stated that 24.02.2001, being not a working day, here had sought the permission of the Assistant Commissioner by his letter exhibit 67 to open the Warehouse for the purpose of depositing the seized articles while as per P.w.2/Fatima Noronha, 24.02.2001 was a working day. With the re-examination of P.w.2/Fatima Noronha and the production of the said Circular, through P.w.6/Lillian Fernandes, the entire controversy has been set at rest and it appears now from the said Circular dated 08.02.2001, exhibit 91, that the offices of the Commissioner and Central Excise, Panaji, etc., were ordered to remain open on all Saturdays from 10.02.2001 to 31.03.2001 and it is quite

probable that the Complainant being a Field Officer, as stated on his behalf, did not know about the said Circular at the time when he made the letter to the Assistant Commissioner. Section 311 gives a discretion to the Court not only from the point of view of the accused and the prosecution, but also from the point of view of an orderly society. The power is given to the Court to ensure justice. The prosecution was certainly entitled to seek a re-examination of P.w.2/Fatima Noronha, in the light of the statement made by her, which conflicted with that of the Complainant and the Court was within its discretion to have allowed such an application. By allowing the said application, there was no question of any loophole being allowed to be filled in by the prosecution but the prosecution had filed the said application only to explain the said discrepancy which arose in the evidence produced. The Apex Court in the case of ***Zahira Habibulla*** (supra), has referred to its earlier decision in the case of ***Rajendra Prasad v. Narcotic Cell ((1999) 6 S.C.C. 110)***. In this case, it was held that it is common experience in criminal Courts that defence counsel would raise objections whenever Courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the Court could not "fill the lacuna in the prosecution case". A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public

Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a Court cannot fill up. The lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the original Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better. As regards the power under Section 311 of the Code, the Supreme Court observed that the power of the Court under Section 165 of the Evidence Act, is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory

portion which compels he Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. The object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to upheld the truth. That was precisely done in the case at hand by the learned Special Judge by allowing the application to recall and re-examine P.w.2/Fatima Noronha to explain the inconsistent statements, for the Court was certainly entitled to find out what was the true situation in the light of the said conflicting statements. The words “at any stage” appearing in Section 311 of the Code are indicative that the power could be exercised at any time before Judgment. Section 311 of the Code is couched with widest possible terms and calls for no limitation. In my view, the learned Special Judge did not commit any error in allowing the said application but in fact discharged a duty cast upon

the Court in eliciting the truth behind the said conflicting statements. The power given under Section 311 of the Code is meant for Judges to be proactive and do justice. Indeed, the Apex Court in ***Zahira Habibulla v. State of Gujarat (supra)***, has stated that recourse may be had by Courts to power under this Section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.

That takes us to Section 42(2) of the Act and the information recorded in form DRI–1 and produced at exhibit 59. Learned Senior Advocate Shri Lotlikar submits that the said information does not say as to where the accused could be found and the fact that the accused would be proceeding to Panaji, was not recorded in the said information. He also submits that the additional information which was received, was not put down in writing. Shri D' Souza, the learned Counsel on behalf of A2/Vimal Singh, has submitted that though the said prior information was not necessary to be given, it appears that it is fabricated and was created subsequently. In support of the submission, Shri D' Souza submits that A2/Vimal Singh is from Varca, is not mentioned in as much as per the Pancha, he stated that they came to know the value afterwards and,

therefore, the value of twenty lakhs could not have been mentioned on the same. It is the submission of Shri D' Souza, that the absence of the said facts from the said information, exhibit 59, makes it suspicious and throws doubt on the genesis of the case of the prosecution. Shri Vaz, the learned Public Prosecutor, has submitted that only a gist of the information which was received, was required to be recorded and that is with a view to keep a check on the subordinates who may be conducting the raids. According to Shri Vaz, there was no necessity of the route to have been mentioned on Exhibit 59.

17. The Complainant was cross examined at length on the subject of the said information, though in fact the same was recorded by P.w.5/Inspector Cruz. The Complainant on being shown DRI-I, exhibit 59, stated that there was no mention that A2/Vimal Singh was from Bihar or that one of them would be speaking in Hindi, but could not explain why it was not so recorded. He stated that there was additional information in finer details, which were not recorded on the said DRI-1, exhibit 59, but were orally told to him and, at the same time, he stated that there was no particular reason why finer details were not incorporated therein. He stated that the valuation of the drugs is made only after weighing but, before the

actual seizure, the Inspector had told him that it would be 10 kgs and above. P.w.5/Inspector Cruz, in his cross examination, conceded that he had not recorded that the two accused would be travelling from Margao towards Panjim, but that was because, that part of the information was subsequently received by him on his cell phone. He denied the suggestion that it was prepared subsequent to the raid. He also denied the suggestion that he had not received further information on his cell phone. There is no doubt, that the object behind Section 42(2) of the Act, is to keep the superior Officers informed about the raid to be conducted by subordinate Officers. It has been stated by the Supreme Court in the case of ***M. Prabulal v. Assistant Director DRI (supra),*** that sub-section (2) of Section 42, is a mandatory provision and in terms of this provision, a copy of information taken down in writing under sub-section (1) or ground recorded for the belief under the proviso thereto, is required to be sent by the officer to his immediate superior official and that it is clear from the language of sub-section (2) of Section 42 that it applies to an officer contemplated by sub-section (1) thereof and not to a Gazetted Officer contemplated by sub-section (2) of Section 41, when such a Gazetted Officer himself makes an arrest or conducts search and seizure. The Supreme Court has also noted that Section 43 relates to power of seizure

and arrest in a public place. Any officer of any of the departments mentioned in Section 42 is empowered to seize contraband etc. and detain and search a person in any public place or in transit on existence of ingredient stated in Section 43 and that it can, thus, be seen that Sections 42 and 43 do not require an officer to be a Gazetted Officer whereas Section 41(2) requires an officer to be so. A Gazetted Officer has been differently dealt with and more trust has been reposed in him can also be seen from Section 50 of the Act, which gives a right to a person about to be searched to ask for being searched in the presence of a Gazetted Officer and since the Gazetted Officer himself conducted the search, arrested the accused and seized the contraband, he was acting under Section 41 and, therefore, it was not necessary to comply with Section 42 of the Act. In the case at hand, the search, seizure and arrest was conducted in the presence of the Complainant, who himself was a Gazetted Officer and that too after the Complainant had informed orally and obtained the permission of his next superior officer namely the Assistant Collector of Customs, as stated by him, and, therefore, there was no necessity of the said information having been written down as required under Section 42(2) of the Act, though the same appears to have been done as a routine procedure normally followed by the officer of the Complainant. It is certainly not to be expected that every

detail which is conveyed, should be written down in the said report or information. In a given case, not all details may be available. There is nothing improbable about further details being given subsequently to P.w.5 as regards the route the accused would be taking. The approximate value was probably recorded on the basis of the approximate weight of hashish with which they would be travelling and, on that count again, the evidence of the Complainant/P.w.4 or for that matter, P.w.5/Inspector Cruz, cannot be discarded. I am not inclined to accept the submission/s that exhibit 59 was recorded subsequently.

18. The next submission made on behalf of the accused is that the alleged recovery is not beyond a shadow of doubt. It is true that P.w.3/Arnold D' Costa stated that he went directly from his office at Curtorim to the KTC bus stand at Margao, while the Complainant/P.w.4 stated that P.w.3/Arnold had come to his office and except for the said discrepancy between the evidence of the two, there is no other discrepancy in their evidence which has been pointed out on behalf of the accused. Admittedly, P.w.3/Arnold D' Costa had stood as a panch witness earlier on 19.02.2001 and that raid was conducted by the Complainant himself at Sai Service, at Porvorim on the way from Porvorim to Panjim. That case was the subject matter of Criminal Appeals Nos. 28 and 29 of 2004, before this

Court. The learned Special Judge, on this aspect of the case, observed that it is not a material lapse going to the root of the case of the Complainant more so when both the Complainant and P.w.3/Arnold D' Costa were examined after more than one and half year of the stated date. In my view, it is quite probable that it is the Complainant who mixed up the fact of the visit of P.w.3/Arnold first to the office with his visit on the date of previous raid. In any event, on that slight discrepancy alone, neither the evidence of P.w.3/Arnold D' Costa or for that matter of the Complainant, can be thrown overboard. The said discrepancy does not at all affect the creditability of the evidence given by the Complainant as well as P.w.3/Arnold D' Costa, when otherwise, their evidence in all other aspects, is well corroborated.

19. It is submitted that the option to be searched, had to be given at the place where the accused were arrested but, in my view, option had to be given only when search was to be conducted and, in this case, the search was in fact conducted at the office of the Complainant. In fact, no option was required to be given because what was to be searched was the bag which A-1/Satyawan Pagi was carrying and the motorcycle on which both the accused were travelling. It has been constant and consistent view of the Supreme Court that Section 50 applies only in cases of personal search and

does not extend to a search of a bag, container, etc. It is only in the case of ***State of H.P. v. Pawan Kumar (2004 (7) SCC 735)***, there was a difference of opinion which has now been set at rest by three learned Judges of the Supreme Court in the case of ***State of H.P. v. Pawan Kumar (2005 AIR SCW 2154)***, by reiterating that the word "person" would mean a human being with appropriate coverings and clothings and also footwear. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being as they are given a separate name and are identifiable as such. It is also submitted that the panchanama ought to have been done at the place where both the accused were accosted or atleast begun at that place and concluded in the office of the Complainant. Here, the Complainant has given his reason that he found the place to be unsafe and, therefore, he proceeded with the accused and the motorcycle to their office to conduct the panchanama. There was no further cross examination on behalf of the accused on that part of the statement of the Complainant. In my view, the Complainant was certainly the best Judge to find out whether it would be safe to conduct the panchanama at that place considering that one of the accused namely A1/Satyawan Pagi had tried to resist the arrest and A2/Vimal Singh had tried to run away from the scene and had to be overpowered and apprehended. It is true that there were

sufficient officers accompanying the Complainant who could have held the accused there and completed the panchanama but than the Complainant himself chose not to carry out the panchanama because he found the place to be unsafe and it would not be proper for this Court to go into his subjective satisfaction. In a similar situation, in the case of ***M. Prabulal v. Assistant Director DRI(supra),*** the Apex Court took note of the decision of the Constitution Bench in ***Pooran Mal v. Director of Inspection (Investigation) ((1974) 1 SCC 345),*** that Courts in India and England had consistently refused to exclude the relevant evidence merely on the ground that it is obtained by illegal search or seizure. The Court also noted that though the mahazar was not prepared at the spot but at the office of the Customs Department, it was found that the accused were very much present throughout and there was no allegation or suggestion that the contraband article was, in any way, meddled with by the officers. The position in the present case was also the same and that there were no allegation about meddling with the contraband. Applying the said ratio, in my view, on the facts of this case, it cannot be said there is illegality in the seizure on the contraband only because the actual seizure under panchanama was carried out at the office of the Customs Department, within a few kilometres from the place where the accused were arrested and which place, considering

that it is next to the bus stand, would have been otherwise crowded. Lastly, it is contended that there was delay in submitting the sample at the Warehouse. As can be seen from the Complainant's letter to the Warehouse Officer, exhibit 34, the two samples S-1 and S-2, along with the remnant sample (exhibit A), were received in the Warehouse at 2.45p.m. on 24.02.2001. It can be seen from the evidence of the Complainant that after the statements of the accused were recorded, they were arrested at about past midnight of 23/24.02.2004 and produced before the JMFC, Margao, at 10.00 hours of 24.02.2001 and placed in the Judicial Lock Up at Margao, at 10.30 hours. The Complainant had certainly to travel from Margao to Panaji to the Warehouse to deposit the said articles. The Complainant stated that the property was kept by him in a different cupboard, of which, both the keys were with him. Considering the time taken from 10.30a.m. to 2.45p.m. and further considering that the Complainant had to travel from Margao to Panaji, it cannot be said that there was any unnecessary delay in lodging the seized articles in the Warehouse. The Complainant was a Gazetted Officer, who as stated by the Supreme Court, certainly requires greater creditability to be given than other officers. As stated by the Supreme Court, a Gazetted Officer has been differently dealt with and more trust has been reposed in him by the provisions of the Act and, therefore,

there is no room for any suspicion that the seized articles would have been tampered with from the time they were seized till the time they were deposited in the Warehouse. In fact, it has been stated by the analyst P.w.1/Kaissare, that the seals fixed on the envelope were intact and tallied with the specimen seal impression sent separately.

20. In the last analysis, it must be observed that the evidence of the Complainant is reliable and convincing and the same has been amply corroborated by P.w.3/Arnold D' Costa, who is an independent Government servant, as well as by P.w.5/Inspector Cruz, who belongs to the same department as that of the Complainant. The evidence of the Complainant shows that both the accused were found in joint possession of hashish found with them. Both the accused also made extra-judicial confessions which were recorded under Section 67 of the Act. The evidence produced by the Complainant was more than sufficient to bring home the charge against the accused. Both the accused were rightly convicted by the learned Special Judge. I find there is no merit in these appeals and, consequently, the same are hereby dismissed.

N. A. BRITTO, J.

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